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RECENT IMPORTANT DECISIONS

BANKS, NATIONAL—STOCKHOLDERS' LIABILITY—STATUTE OF LIMITATIONS.—In an action brought by the receiver of a National Bank against a shareholder to enforce his personal liability under U. S. Rev. St. Sec. 5151, *Held*, that the personal liability of a shareholder cannot be regarded as contractual for the purpose of making applicable the three year limitation prescribed by the Washington Code, Sec. 4800, Subd. 3, for bringing "an action upon a contract or liability express or implied which is not in writing and does not arise out of any written instrument." The effect of the holding was to dismiss the case as falling within the two-year limitation clause of the statute. *McCaine* v. *Rankin* (1905), 25 Sup. Ct. Rep. 410.

The holding is based on the theory that by reason of the necessity of the intervention of a receiver, between the creditors of the bank and the stockholders to enforce the liability of the latter, the liability is not contractual, but purely statutory. The great weight of authority is to the effect that the personal liability of stockholders over and above the value of their stock to the creditors of a corporation, is a contractual one, the law making them liable being a part of the contract which they assumed on becoming stockholders. *Ferguson* v. *Sherman*, 116 Cal. 169, 37 L. R. A. 622; *Bell* v. *Farewell*, 176 Ill. 489; *Whitman* v. *Oxford Nat'l Bank*, 176 U. S. 559; *Hancock Nat'l Bank* v. *Ellis*, 166 Mass. 414; *Pulsifer* v. *Green*, 96 Me. 438. The foregoing cases relate to the effect of the Kansas Constitution as to liability of stockholders outside the state. Also see *Howarth* v. *Angle*, 162 N. Y. 179, 47 L. R. A. 725, and *Howarth* v. *Lombard*, 175 Mass. 570, where the constitutional provision in question was very similar to the section of the Federal Statutes here involved. There are, however, decisions to the effect that such liability is not contractual. *Halsey* v. *McLean*, 12 Allen 439, 90 Am. Dec. 157; *Crippen* v. *Leighton*, 69 N. H. 540, 46 L. R. A. 467; *Hancock Nat'l Bank* v. *Farnham*, 20 R. I. 466. But in *Concord Nat'l Bank* v. *Hawkins*, 174 U. S. 364, the liability created by the section here in question was held to be contractual, and it is difficult to see the ground for a different holding when the application of the Statute of Limitations is in question. On the whole the dissenting opinion of Justices WHITE, BROWN and MCKENNA seems to have the better support in both authority and reason. See *Carroll* v. *Green*, 92 U. S. 509; *Corning* v. *McCullough*, 1 N. Y. 47; *Platt* v. *Wilmot*, 193 U. S. 602; note 34 L. R. A. 750; MORAWETZ CORP. §§ 872-875.

BILLS AND NOTES—INDORSEMENT PROCURED BY FRAUD.—Where the indorsement by defendant of a note, which he had made to himself as payee, was fraudulently procured by inducing him to sign a certain other instrument beneath which the note was placed and through which the ink penetrated, it was *held* that the fraud was a good defense to an action on the note by a bona fide holder. *Yakima Valley Bank* v. *McAllister* (1905), — Wash. —, 79 Pac. Rep. 1119.

The circumstances of the case are somewhat novel, but the holding seems to be clearly correct. Though the signature of the defendant appeared on